

Message Text

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ACTION SCS-03

INFO OCT-01 ARA-06 ISO-00 EB-08 L-03 CAB-02 CIAE-00
COME-00 DODE-00 DOTE-00 INR-07 NSAE-00 FAA-00 PM-04
NSC-05 SP-02 SS-15 INRE-00 NSCE-00 SSO-00 SCA-01 /057 W
-----080125Z 063864 /14

O R 072315Z MAR 77

FM AMEMBASSY MEXICO

TO SECSTATE WASHDC IMMEDIATE 0739

INFO ALL US CONSULATES IN MEXICO 30

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E. O. 11652: N/A

TAGS: CPRS, MX

SUBJECT: RETURN OF AIRCRAFT IN CUSTODY OF MEXICAN ATTORNEY GENERAL

1. SUMMARY: THE MEXICAN ATTORNEY GENERAL HAS PROPOSED AND ALREADY BEGUN TO IMPLEMENT A NEW PROCEDURE FOR THE RETURN OF AMERICAN REGISTERED AIRCRAFT WHICH HAVE BEEN TAKEN INTO CUSTODY BY HIS DEPARTMENT. THE PROCEDURE PARALLELS THE 1936 CONVENTION BETWEEN THE US AND MEXICO, BUT INVOLVES DIRECT DEALINGS BETWEEN THE ATTORNEY GENERAL'S OFFICE AND EMBASSY INSTEAD OF THROUGH THE SECRETARIAT OF FOREIGN RELATIONS. WHILE THE BASIC REQUIREMENTS OF THE CONVENTION WOULD BE MET, THE AIRCRAFT WOULD BE RELEASED UNDER AUTHORITY OF EXISTING MEXICAN LAW. THE NEW PROCEDURE DOES NOT AFFECT THE USE OF THE CONVENTION TO APPLY FOR THE RETURN OF AIRCRAFT HELD BY OTHER AGENCIES OF THE GOM. ITS PURPOSE IS TO SLICE THROUGH THE RED TAPE WHICH HAS CAUSED PROCEEDINGS UNDER THE CONVENTION TO TAKE SO LONG IN THE PAST. IF IT WORKS AS ENVISIONED, IT WILL HAVE SIGNIFICANT ADVANTAGES FOR THE EMBASSY AND CLAIMANT OWNERS IN ELIMINATING THE REQUIREMENTS FOR SPANISH TRANSLATIONS AND MEXICAN CONSULAR AUTHENTICATION OF DOCUMENTS, ELIMINATING BOTTLENECKS IN THE FOREIGN SECRETARIAT, FACILITATING THE LOCATION OF AIRCRAFT

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AND REDUCING THE POSSIBILITY OF FINANCIAL IMPOSITION ON OWNERS.

2. THE MEXICAN ATTORNEY GENERAL HAS INITIATED DIRECT CONTACT WITH CONSUL GENERAL MCANINCH WITH A VIEW TO FACILITATING AND EXPEDITING THE RETURN OF AIRCRAFT OF AMERICAN REGISTRY WHICH HAVE BEEN TAKEN INTO THE

CUSTODY OF THE ATTORNEY GENERAL'S OFFICE OR FEDERAL AGENTS OF THE PUBLIC MINISTRY(FEDERAL DISTRICT ATTORNEYS). WHILE THERE HAS BEEN SOME MENTION OF THE POSSIBILITY OF RETURNING AMERICAN AIRCRAFT OF WHICH HAVE BEEN CONFISCATED FOR UNINTENTIONAL VIOLATIONS OF MEXICAN LAW, E.G. ILLEGAL ENTRY, THE ATTORNEY GENERAL'S INITIATIVE ESSENTIALLY INVOLVES AIRCRAFT WHICH WOULD BE RETURNABLE UNDER THE 1936 CONVENTION BETWEEN THE UNITED STATES AND MEXICO. IN THE ATTORNEY GENERAL'S VIEW, PAST PROCEDURES UNDER THE CONVENTION HAVE BECOME TOO CUMBERSOME AND A NEW APPROACH IS REQUIRED.

3. THE ATTORNEY GENERAL BEGAN THIS NEW APPROACH BY DESIGNATING HIS EXECUTIVE OFFICER (OFICIAL MAYOR), LIC. FERNANDO BAEZA MELENDEZ, AS THE CHIEF POINT OF CONTACT BETWEEN HIS OFFICE AND THE EMBASSY FOR AIRCRAFT CLAIMS, AND OTHERWISE RAISING THE WORKING LEVEL OF CLAIMS CASES TO INVOLVE THE DIRECTOR GENERAL OF PRELIMINARY INVESTIGACIONES, LIC. RODOLFO CHAVEZ CABRILLO AND INSPECTOR GENERAL LIC. JUAN ZARAGOZA BARUCH. A NEW OFFICE OF VEHICLE CONTROL HAS BEEN SET UP, HEADED BY ING. GONZALO GARCIA TERRAZAS. IN EXISTENCE LESS THAN A MONTH, THE NEW VEHICLE CONTROL OFFICE HAS SCoured THE COUNTRY TO IDENTIFY AIRCRAFT OF AMERICAN REGISTRY AND HAS DEVELOPED AN EXTENSIVE FILE, COMPLETE WITH PHOTOGRAPHS, OF SUCH AIRCRAFT. THIS HAS ALREADY BEEN PUT AT THE DISPOSAL OF THE EMBASSY.

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4. THE PROCEDURES OUTLINED BY THE ATTORNEY GENERAL INVOLVE CLOSE COOPERATION BETWEEN HIS OFFICE AND THE EMBASSY TO IDENTIFY AND LOCATE AIRCRAFT OF AMERICAN REGISTRY WHICH ARE TAKEN INTO THE CUSTODY OF THAT OFFICE. ONCE SUCH AN AIRCRAFT HAS BEEN IDENTIFIED, IT IS FOR THE EMBASSY TO SATISFY ITSELF, THROUGH OBTAINING FROM THE OWNER THE PROOF OF OWNERSHIP AND EVIDENCE OF THEFT OR CONVERSION REQUIRED BY THE CONVENTION, THAT THE AIRCRAFT WOULD BE SUBJECT TO RETURN UNDER THE CONVENTION. WHEN IT HAS DONE SO, THE EMBASSY WILL NOTIFY THE ATTORNEY GENERAL OF THE FACT AND REQUEST THE RETURN OF THE AIRCRAFT, BY LETTER SIGNED BY THE CHARGE. THE LETTER WILL INDICATE THE NAME OF THE OWNER OR OF THE PERSON DESIGNATED BY THE OWNER TO TAKE CUSTODY OF THE AIRCRAFT. WHEN THE LETTER IS RECEIVED, THE ATTORNEY GENERAL'S OFFICE WILL UTILIZE ITS OWN RESOURCES TO DETERMINE WHETHER ANY INFORMATION EXISTS WHICH INDICATES THAT THE OWNER OF THE AIRCRAFT IS IN ANY WAY INVOLVED WITH WHATEVER

OFFENSE REQUESTED IN THE AIRCRAFT'S SEIZURE, AND WILL
NOTIFY THE EMBASSY OF ITS DETERMINATION. IF NO SUCH
INFORMATION IS DEVELOPED, THE ATTORNEY GENERAL'S
OFFICE WILL INSTRUCT BY TELEPHONE THE OFFICIAL HAVING
CUSTODY OF THE AIRCRAFT TO RELEASE IT. THE EMBASSY
OR APPROPRIATE CONSULAR OFFICE WILL PROVIDE THE OWNER
OR HIS DESIGNATED REPRESENTATIVE WITH A LETTER
ADDRESSED TO THAT OFFICIAL NOTIFYING HIM THAT IN
ACCORDANCE WITH INSTRUCTIONS FROM THE ATTORNEY
GENERAL'S OFFICE THE USG ACCEPTS TECHNICAL RECEIPT OF
THE AIRCRAFT, AND REQUESTING THAT CUSTODY BE HANDED
OVER TO THE DESIGNATED INDIVIDUAL. THE OFFICIAL WILL
ORDINARILY BE EITHER A FEDERAL AGENT OF THE PUBLIC
MINISTRY OR A JUDGE. THE ATTORNEY GENERAL'S OFFICE
ACKNOWLEDGES THAT THERE IS LIKELY TO BE SOME INITIAL
RESISTANCE ON THE PART OF JUDGES WHO WANT TO HOLD AIRCRAFT AS
EVIDENCE IN A PENDING COURT CASE, BUT EMPHASIZES THAT THIS IS
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NOT NECESSARY UNDER MEXICAN LAW AND THAT AG WILL SO INSTRUCT
JUDGES.

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COME-00 DODE-00 DOTE-00 INR-07 NSAE-00 FAA-00 PM-04
NSC-05 SP-02 SS-15 INRE-00 SSO-00 NSCE-00 SCA-01 /057 W
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O R 072357Z MAR 77 ZFF-4
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5. APPARENTLY NOT A MAN TO LET GRASS GROW UNDER HIS
FEET, THE ATTORNEY GENERAL HAS PROVIDED THE EMBASSY
WITH A LIST OF TWENTY AIRCRAFT PRESENTLY IN THE CUSTODY

OF HIS OFFICE AND HAS ASKED THAT THE EMBASSY ACCEPT THEM. OF THESE, FIVE ARE AIRCRAFT FOR WHICH THE EMBASSY HAS ALREADY SUBMITTED CLAIMS BY DIPLOMATIC NOTE TO THE FOREIGN SECRETARIAT (N-22-DM, N-3935-W, N-4067-W, N-4391-T, AND N-9232-P). HE HAS ALSO ISSUED INSTRUCTIONS FOR THE RELEASE OF N-5-MK, AN UNDEVELOPED CONVENTION CASE AT HERMOSILLO. OF THE REMAINING FOURTEEN AIRCRAFT ON THE LIST, TEN ARE PRESUMPTIVE CONVENTION CASES AND FOUR ARE UNKNOWN TO THE EMBASSY. THE EMBASSY IS IN THE PROCESS OF REQUESTING THE RETURN OF THE TWO REMAINING CONVENTION CASES ON THE ATTORNEY GENERAL'S LIST, PLUS SIX MORE AIRCRAFT FOR WHICH CLAIMS HAVE ALREADY BEEN SUBMITTED UNDER THE CONVENTION AND WHICH THE EMBASSY BELIEVES TO BE IN THE CUSTODY OF THE ATTORNEY GENERAL'S OFFICE, PLUS THE TEN PRESUMPTIVE CONVENTION CASES ON THE LIST. THE EMBASSY IS ALSO ADVISING THE ATTORNEY GENERAL THAT IT WILL ATTEMPT TO DETERMINE THE STATUS OF THE FOUR CASES ON THE LIST ABOUT WHICH IT PRESENTLY HAS NO INFORMATION.

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6. COMMENT: IT IS IMPORTANT TO APPRECIATE THAT THE PROCEDURES BEING FOLLOWED DO NOT AFFECT THE VALIDITY OF THE CONVENTION, IN THAT THE ATTORNEY GENERAL'S OFFICE HAS ASSURED THE EMBASSY THAT IT HAS AMPLE AUTHORITY UNDER MEXICAN LAW APART FROM THE CONVENTION TO RETURN TO THEIR LAWFUL OWNERS AIRCRAFT WHICH IT HAS SEIZED. THE EMBASSY PRESUMABLY WILL HAVE TO CONTINUE TO FILE CLAIMS BY DIPLOMATIC NOTE TO THE FOREIGN SECRETARIAT FOR THOSE AIRCRAFT SUBJECT TO THE CONVENTION WHICH ARE IN THE CUSTODY OF OTHER ENTITIES OF THE GOM THAN THE ATTORNEY GENERAL'S OFFICE. EVEN IN THESE CASES, LIC. BAEZA HAS PROMISED TO USE THE ATTORNEY GENERAL'S GOOD OFFICES TO ENCOURAGE THE EXPDITIOUS RETURN OF THE AIRCRAFT INVOLVED. THE ADVANTAGES OF THE NEW PROCEDURE ARE OBVIOUS:

- A) CLAIMANT OWNERS WILL BE SPARED THE NECESSITY OF OBTAINING SPANISH TRANSLATION AND MEXICAN CONSULAR AUTHENTICATIONS OF THEIR DOCUMENTS;
- B) THE DELAYS INHERENT IN DEALING WITH THE ATTORNEY GENERAL'S OFFICE THROUGH THE SECRETARIAT OF FOREIGN RELATIONS WILL BE ELIMINATED;
- C) THE DELAYS AND EFFORT INVOLVED IN LOCATING AIRCRAFT WILL BE LARGELY ELIMINATED; AND
- D) THERE WILL BE LESS OPPORTUNITY FOR OWNERS TO BE FINANCIALLY IMPOSED UPON, THOUGH THEY WILL STILL BE EXPECTED TO PAY REASONABLE STORAGE AND MAINTENANCE CHARGES.

7. IT MAY WELL BE THAT THERE ARE ALSO DISADVANTAGES WHICH WILL EMERGE AS THE NEW PROCEDURES ARE PUT INTO PRACTICE. THE EMBASSY WOULD BE LARGELY BY-PASSING THE SECRETARIAT OF FOREIGN RELATIONS, WHICH IS THE DESIGNATED CHANNEL UNDER THE 1936 CONVENTION FOR SUBMITTING CLAIMS. HOWEVER, THE SECRETARIAT IN THE PAST HAS BEEN A MAJOR BOTTLENECK IN OBTAINING ACTION ON CONVENTION CLAIMS. WE ARE THEREFORE, INCLINED TO ACCEPT THE ASSURANCES OF THE LIMITED OFFICIAL USE

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ATTORNEY GENERAL'S STAFF THAT THERE IS AMPLE AUTHORITY IN MEXICAN LAW FOR THE RETURN OF AIRCRAFT IN THEIR CUSTODY AND TO COOPERATE IN THEIR DESIRE TO SETTLE THE AIRCRAFT CASES QUICKLY OUTSIDE THE REGULAR CONVENTION CHANNELS.

8. THE EMBASSY EXPECTS TO COOPERATE FULLY WITH THE ATTORNEY GENERAL'S OFFICE IN THE RETURN OF AIRCRAFT AND VEHICLES TO THEIR AMERICAN OWNERS. THE DEPARTMENT'S COMMENTS AND SUGGESTIONS ON THIS NEW PROGRAM WOULD BE APPRECIATED. FURTHER EMBASSY COMMENTS ON NEW PROCEDURE WILL FOLLOW.
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Message Attributes

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Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
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